

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION**

**WILLIE J. GILBERT,**

**PETITIONER**

**V.**

**NO. 1:07CV136-P-D**

**LAWRENCE KELLY, et al.,**

**RESPONDENTS**

**ORDER**

Upon consideration of the file and records in this action, the court finds that the Report and Recommendation of the United States Magistrate Judge dated September 22, 2008, was on that date duly served by mail upon Petitioner at his last known address; that more than ten days have elapsed since service of the Report and Recommendation; and that no objection to the Report and Recommendation has been served or filed by any party. The court is of the opinion that the Magistrate Judge's Report and Recommendation should be approved and adopted as the opinion of the court. Therefore, it is

**ORDERED:**

1) the Report and Recommendation of the United States Magistrate Judge dated September 22, 2008, is hereby APPROVED and ADOPTED as the opinion of the court; and

2) the Motion to Dismiss (docket entry 27) is DENIED.

THIS the 10<sup>th</sup> day of October, 2008.

/s/ W. Allen Pepper, Jr.  
W. ALLEN PEPPER, JR.  
UNITED STATES DISTRICT JUDGE